



April 10, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-1390

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID# 133881.

The Texas Department of Criminal Justice (the "department") received a request for information related to various prison employees and inmates. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the requestor has made previous open records requests to which she feels you have not complied. Although you have not provided us with copies of these requests, it is nevertheless apparent that the requestor seeks information relating to a number of different categories: the identity of the department employee who allegedly found a knife in the possession of a named inmate (Item 3); second, the location of certain physical items (Items 7 and 10); third, a medical sign-in log (Item 9); fourth, the current or prior duty assignments for certain department employees (Items 4, 5, and 8); and fifth, unspecified information that was previously requested from the department (Item 6).

Of these five categories of information, you have only provided us with information responsive to Item 3 of the request. Therefore, we presume that, to the extent that it exists, all information responsive to the other categories of the request has been released to the requestor. *See* Gov't Code §§ 552.301, .302. We also note that the department has failed to timely seek an open records decision from this office. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the submitted information is public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome this presumption, the department must provide compelling reasons why the submitted information should not be disclosed. Gov't

Code § 552.302. The applicability of section 552.131 provides such a compelling reason. Therefore, we will determine whether any of the submitted information is protected from disclosure under section 552.131 of the Government Code.

Section 552.131 of the Government Code excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. We note, however, that basic information regarding an alleged crime involving an inmate must be released in accordance with section 552.029(8) of the Government Code. This office has determined that basic information includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed. In this instance, the requestor seeks information relating to a knife being found in an inmate's cell. You state, and we agree, that the possession of a deadly weapon in a penal facility is a felony. Therefore, in accordance with section 552.029(8), we conclude that the department must release basic information regarding this incident. However, the remaining submitted information must be withheld under section 552.131.¹

Because we are able to make a determination under section 552.131, we need not address your other claimed exceptions. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

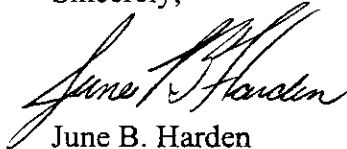
¹This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 133881

Encl. Submitted documents

cc: Ms. Beatrice Benavides
202 Kirk Place
San Antonio, Texas 78225
(w/o enclosures)